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The Institute of Cost Accountants of India

(Statutory body under an Act of Parliament)

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The Institute of Cost Accountants of India

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INDIAN ECONOMY

➲ Index Numbers of Wholesale Price in India (Base: 2004-05=100) Review for the month of July, 2015

The official Wholesale Price Index for All Commodities (Base: 2004-05=100) for the month of July, 2015 declined by 0.6 percent to 177.5 (provisional) from 178.6 (provisional) for the previous month.

INFLATION
The annual rate of inflation, based on monthly WPI, stood at -4.05% (provisional) for the month of July, 2015 (over July, 2014) as compared to -2.40% (provisional) for the previous month and 5.41% during the corresponding month of the previous year. Build up inflation rate in the financial year so far was 0.80% compared to a build up rate of 2.61% in the corresponding period of the previous year.

PRIMARY ARTICLES
The index for this major group declined by 0.5 percent to 247.2 (provisional) from 248.4 (provisional) for the previous month.

FUEL & POWER
The index for this major group declined by 2.0 percent to 187.1 (provisional) from 191.0 (provisional) for the previous month due to lower price of furnace oil (6%), aviation turbine fuel, high speed diesel and naphtha (4% each) and petrol (1%).

MANUFACTURED PRODUCTS
The index for this major group declined by 0.3 percent to 153.7 (provisional) from 154.2 (provisional) for the previous month.

Read more at: http://www.eaindustry.nic.in/cmonthly.pdf

➲ Banks opt for offbeat tactics to tackle $49 billion of bad debts

Under pressure to do more to cut a $49 billion mountain of bad debt, India's state-owned banks are reversing years of lax recovery efforts, naming and shaming smaller borrowers and even using big TV screens at shopping malls to advertise seized assets for sale.

Read more at: http://in.reuters.com/article/2015/07/23/india-banks-debt-idINKCN0PX01E20150723

➲ Equity fund inflows near record as retail investors return

Investment in Indian equity mutual funds by domestic retail investors has hit the highest since 2008, signalling the return of individual players drawn to a stock market that is outperforming physical assets such as gold and real estate.

Read more at: http://in.reuters.com/article/2015/07/23/india-funds-idINKCN0PW2LD20150723

➲ India's economic growth prospects dim on delays to reforms

India's economic prospects have dimmed since April due to the government's inability to pass much-needed reforms, a Reuters poll found, but the central bank will probably hold rates steady this year as inflation nudges up gradually.

Source: http://in.reuters.com/article/2015/07/23/economy-poll-india-rbi-rates-idINKCN0PX0OM20150723

➲ FDI inflows rose in 2014-15 from three countries visited by PM Modi

FDI inflows increased in 2014-15 from three countries out of four major investing nations visited by Prime Minister Narendra Modi last fiscal with Australia showing a decline, government said. Replying in the Rajya Sabha, External Affairs Minister Sushma Swaraj said Modi visited 26 countries from June 2014 to July 2015 and all visits had a substantial economic component.

"These efforts have helped in creating a positive image of India and, as a result, FDI equity inflows increased from USD 24.3 billion in financial year 2013-14 to USD 30.9 billion in 2014-15, a growth 27.3 per cent," she said.

Read more at: http://economictimes.indiatimes.com/news/economy/finance/fdi-inflows-rose-in-2014-15-from-three-countries-visited-by-pm-modi/articleshow/48283181.cms

➲ Capital infusion of Rs 25,000 crore a good beginning: Raghuram Rajan

Reserve Bank Governor Raghuram Rajan said Rs 25,000 crore of capital infusion planned by the government in public sector banks this fiscal is "adequate and a good beginning". While Finance Minister Arun Jaitley had in Budget for 2015-16 provided Rs 7,940 crore towards recapitalisation of PSU banks, he sought Parliament nod for another Rs 12,010 crore in the first supplementary demand for grants. Another Rs 5,000 crore will be provided in subsequent supplementary demand through the year totaling Rs 25,000 crore of capital infusion.

"Allocation for first-year recapitalisation is adequate," Rajan said when asked to comment on the infusion plan. "It's a good beginning," he said after his customary meeting with Jaitley ahead of the third bi-monthly monetary policy on August 4.

Read more at: http://economictimes.indiatimes.com/news/economy/finance/capital-infusion-of-rs-25000-crore-a-good-beginning-raghuram-rajan/articleshow/48298670.cm

FM Arun Jaitley assures on-time payment of tax refund to exporters

Finance Minister Arun Jaitley assured exporters of timely payment of tax refund and promised steps to boost shipments, exporters body FIEO said. A delegation of exporters led by FIEO (Federation of Indian Export Organisations) President S C Ralhan, during the meeting, expressed concern about declining exports, the tough global scenario and domestic trading constraints. Ralhan told the Finance Minister that the order book position is not encouraging enough and impacts employment. He urged Jaitley to increase liquidity for the sector and suggested a timely refund of duty drawback, CENVAT and service tax within 10 days. "The Finance Minister was supportive of both the issues and ensured timely action on the matter," FIEO said in a statement.

Read more at: http://economictimes.indiatimes.com/news/economy/finance/fm-arun-jaitley-assures-on-time-payment-of-tax-refund-to-exporters/articleshow/47962821.cms

Government clears 10 FDI proposals worth Rs 1,675 crore

Government has cleared 10 foreign direct investment (FDI) proposals entailing capital inflows of Rs 1,675.15 crore into the country. "Based on the recommendations of Foreign Investment Promotion Board (FIPB) meeting of June 15, the government has approved 10 proposals of FDI amounting to Rs 1,675.15 crore," a Finance Ministry statement said.

Read more at: http://economictimes.indiatimes.com/news/economy/finance/government-clears-10-fdi-proposals-worth-rs-1675-crore/articleshow/48088156.cms

NBFCs will have to seek RBI's permission for acquisition that may result in change of management control

Non-banking finance companies excluding primary dealers will have to seek permission of the Reserve Bank of India for any takeover or acquisition that may or may not result in change of management control, the central bank said in a notification. Moreover, those companies will also have to ask for RBI's approval whenever there is any change in more than 30% of directors excluding independent directors. Prior written permission of the Reserve Bank will be required for "any change in the shareholding of an NBFC, including progressive increases over time, which would result in acquisition/ transfer of shareholding of 26% or more of the paid up equity capital of the NBFC." Anything beyond 26% due to buyback of shares/ reduction in capital where it has approval of a competent Court will not attract such approval. The same is however, required to be reported to the Reserve Bank not later than one month from its occurrence.

Read more at: http://economictimes.indiatimes.com/news/economy/finance/nbfcs-will-have-to-seek-rbis-permission-for-acquisition-that-may-result-in-change-of-management-control/articleshow/48005688.cms

BANKING

Circulars/ Notifications

Re-export of unsold rough diamonds from Special Notified Zone of Customs without Export Declaration Form formality

In order to facilitate re-export of unsold rough diamonds imported on free of cost basis at SNZ, RBI has clarified that the unsold rough diamonds, when re-exported from the SNZ (being an area within the Customs) without entering the Domestic Tariff Area (DTA), do not require any EDF formality. Entry of consignment containing different lots of rough diamonds into the SNZ should be accompanied by a declaration of notional value by way of an invoice and a packing list indicating the free cost nature of the consignment. Under no circumstance, entry of such rough diamonds is permitted into DTA. For the lot/ lots cleared at the Precious Cargo Customs Clearance Centre, Mumbai, Bill of Entry shall be filed by the buyer. AD bank may permit such import payments after being satisfied with the bona-fides of the transaction.

Source: Notification No. RBI/2015-16/110 [A.P. (DIR Series) Circular No.1] dated: July 02, 2015

Discount Rate for Computing Present Value of Future Cash Flows

Rate equal to the bank's Benchmark Prime Lending Rate or base rate (whichever is applicable to the borrower) as on the date of restructuring plus the appropriate term premium and credit risk premium for the borrower category on the date of restructuring will be used to discount future cash flows for the purpose of determining the diminution in fair value of loans on restructuring vide paragraph 4.5 of circular DBOD.BP.BC. No.99/21.04.132/2012-13 dated May 30, 2013.

On a review, it has been decided that a rate equal to the actual interest rate charged to the borrower before restructuring may be used to discount the future cash flows for the purpose of determining the diminution in fair value of loans on restructuring. In cases where the existing credit facilities to a borrower carry different rates of interest, the weighted average interest rate (with share of each credit facility in the total outstanding of the borrower as on the date of restructuring being used as weights) may be used as the discounting rate. This discount rate may be used to discount both the pre-restructuring cash flows as well as post-restructuring cash flows.

The above methodology may be consistently used wherever banks are required to compute fair/present value of loans under the guidelines issued by the Reserve Bank of India, including for the purpose of computing net present value of project loans as required in terms of circular DBR.No.BP.BC.53/21.04.132/2014-15 dated December 15, 2014.

Source: Notification No. RBI/2015-16/111 [DBR.No.BP.BC.27/21.04.048/2015-16] dated: July 2, 2015

➲ **Applicability of Credit Concentration Norms**

In terms of section 45IA(7)(I) of the Reserve Bank of India Act, 1934, for calculation of Net Owned Fund (NOF), the loans given to/ investments made in companies in the same group/ subsidiaries by NBFCs, inter alia, shall be reduced to the extent such amount exceeds 10 per cent of the Owned Funds. At the same time, such exposures are subject to the Concentration of Credit/ Investment norms as per the Systemically Important Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2015 dated March 27, 2015 and Non-Banking Financial (Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007 dated February 22, 2007.

On a review RBI has decided that in determining Concentration of Credit/ Investment, the following shall be excluded:
(A) investments of NBFC in shares of
(i) its subsidiaries;
(ii) companies in the same group,
to the extent they have been reduced from Owned Funds for the calculation of NOF and
(B) the book value of debentures, bonds, outstanding loans and advances (including hire-purchase and lease finance) made to, and deposits with, -
(i) subsidiaries of the NBFC; and
(ii) companies in the same group,
to the extent they have been reduced from Owned Funds for the calculation of NOF.

Source: Notification No RBI/2015-16/114 [DNBR (PD) CC. No. 064/03.10.001/2015-16] dated: July 02, 2015

➲ **Financial Benchmarks India Pvt. Ltd.(FBIL)- Benchmark Administrator**

Circular FMD.FSRG.No.102/02.18.002/2013-14 dated April 16, 2014 states "Financial Benchmark- Governance Framework for Benchmark Submitters" wherein it was stated that in order to overcome the possible conflicts of interest in the benchmark setting process arising out of the current governance structure of the Fixed Income Money Market and Derivative Association of India (FIMMDA) and Foreign Exchange Dealers' Association of India (FEDAI) an independent body will be formed, either separately or jointly, by the FIMMDA and the FEDAI for administration of the benchmarks.

An independent company named 'Financial Benchmarks India Pvt. Ltd, jointly floated by the FIMMDA, the FEDAI and the IBA has since been incorporated. The FBIL will act as an independent benchmark administrator and gradually take over the benchmarks currently being disseminated by other agencies. FBIL has since announced taking over the administration of the benchmark for the overnight inter-bank rate to be based on the actual traded rate from July 22, 2015, replacing the existing "FIMMDA-NSE Overnight MIBID/MIBOR" by "FBIL- Overnight MIBOR". FBIL proposes to take over administration of foreign exchange benchmarks and other Indian Rupee interest rate benchmarks over a period of time in consultation with the stakeholders. FIMMDA and FEDAI would continue to act as administrators for these Rupee interest rate and foreign exchange benchmarks respectively till they are shifted to the FBIL.

Source: Notification No RBI/2015-16/115 [FMRD.FMSD. No.03/03.01.006/2015-16] dated: July 02, 2015

➲ **Investment in companies engaged in tobacco related activities**

Foreign direct investment is prohibited in manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes as per Annex A of Schedule 1 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA.20/2000-RB dated May 3, 2000, and Notification No. FEMA. 242/2012- RB dated October 19, 2012. It is clarified that the prohibition applies only to manufacturing of the products mentioned therein and foreign direct investment in other activities relating to these products including wholesale cash and carry, retail trading etc. shall be governed by the sectoral restrictions laid down in the FDI policy framed by the Department Of Industrial Policy & Promotion, Ministry of Commerce and Industry, Government of India and in the Schedule 1 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000.

Source: Notification No. RBI/2015-16/116 [A.P. (DIR Series) Circular No.2] dated: July 3, 2015

➲ **Returns to be submitted by NBFCs (Asset Size below Rs. 500 crore)**

Please refer to the DNBR (PD) CC.No. 002/03.10.001/2014-15 dated November 10, 2014 on revised Regulatory Framework for NBFCs. As per the revised regulations, all non-deposit taking NBFCs (NBFCs-ND), with assets less than Rs. 500 crore are

required to submit an Annual Return. Two new Return Formats have been created to capture important financial parameters of the respective category of NBFCs, i.e.

i.NBS 8 for NBFCs-ND with assets size between Rs.100-500 crore, and
ii. NBS 9 for NBFCs-ND with assets size below Rs. 100 crore.
These Return Formats are available on the website https://cosmos.rbi.org.in/ under the menu 'Download Blank Form'. The Return Formats are also available in the RBI main website https://www.rbi.org.in/> Function wise Sites > Regulation > Non Banking > Forms. The Annual Return should be submitted within 30 days of closing of the financial year, i.e. by 30th April of every year. Considering that most of these NBFCs will be filing such return for the first time, the Annual Return for the year ending March 31, 2015 may be filed by 30th September 2015. Further, Non-deposit taking NBFCs with assets of Rs. 50- 500 crore that have already submitted the prescribed returns for the quarter ending March 31, 2015 are not required to submit the annual return for the year ending March 2015 (to avoid duplication).

There is no change in the returns prescribed for deposit taking NBFCs and NDSI (with assets of Rs 500 crore and above).

Source: Notification No.RBI/2015-16/119 [DNBS (IT).CC. No. 01/24.01.191/2015-16] dated: July 09, 2015

➲ **Issue of shares under Employees Stock Options Scheme and/or sweat equity shares to persons resident outside India**

RBI has decided that an Indian company may issue "employees' stock option" or "sweat equity shares" to its employees and directors or employees and directors of its holding company or JV or wholly owned overseas subsidiaries resident outside India, provided that:

a. The scheme has been drawn either with consideration the regulations issued under the Securities Exchange Board of India Act, 1992 or the Companies (Share Capital and Debentures) Rules, 2014 notified by the Central Government under the Companies Act 2013.
b. The "employee's stock option" or "sweat equity shares" issued to non-resident employees and directors under the applicable rules/regulations should be in compliance with the sectoral cap applicable to the company.
c. The issue of "employee's stock option"/ "sweat equity shares" in a company where foreign investment is under the approval route shall require prior approval of the Foreign Investment Promotion Board (FIPB) of Government of India.
d. The issue of "employee's stock option"/ "sweat equity shares" under the applicable rules/regulations to an employee/director who is a citizen of Bangladesh/Pakistan shall require prior approval of the Foreign Investment Promotion Board of Government of India.

Source: Notification No. RBI/2015-16/128 A.P. (DIR Series) Circular No.4 dated: July 16, 2015

➲ **Export factoring on non-recourse basis**

In order to facilitate exports, Authorised Dealer Category – I banks have been permitted to provide 'export factoring' services to exporters on 'with recourse' basis by entering into arrangements with overseas institutions for this purpose without prior approval from the Reserve Bank of India subject to compliance with guidelines issued by the Department of Banking Regulation in this regard.

Taking into account the recommendation made by the Technical Committee on Facilities and Services to the Exporters (Chairman: Shri G. Padmanabhan), it has been decided to permit AD banks to factor the export receivables on a non-recourse basis, so as to enable the exporters to improve their cash flow and meet their working capital requirements subject to certain conditions vide Notification No. RBI/2015-16/129 A.P. (DIR Series) Circular No.5 dated: July 16, 2015.

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=9945&Mode=0

➲ **Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances – Credit Card Accounts**

In order to bring in greater credit discipline as also to provide operational flexibility to credit card issuers, it has been decided that, with effect from the date of this circular, 'past due' status of a credit card account for the purpose of asset classification would be reckoned from the payment due date mentioned in the monthly credit card statement. Consequently, in case of banks, a credit card account will be treated as non-performing asset if the minimum amount due, as mentioned in the statement, is not paid fully within 90 days from the payment due date mentioned in the statement. However, banks shall report a credit card account as 'past due' to credit information companies (CICs) or levy penal charges, viz. late payment charges, etc., if any, only when a credit card account remains 'past due' for more than three days. The number of 'days past due' and late payment charges shall, however, be computed from the payment due date mentioned in the credit card statement.

Source: Notification No RBI/2015-16/126 [DBR.No.BP.BC.30/21.04.048/2015-16] dated: July 16, 2015

➲ **Deposits placed with NABARD/SIDBI/NHB for meeting shortfall in Priority Sector Lending by Banks-Reporting in Balance Sheet**

RBI has decided that for accounting periods commencing on or

after April 1, 2015, deposits placed with NABARD/SIDBI/NHB on account of shortfall in priority sector targets should be included under Schedule 11- 'Other Assets' under the subhead 'Others' of the Balance Sheet. Banks may also disclose the details of such deposits, both for the current year and previous year, as a footnote in Schedule 11 of the Balance Sheet. Further, while presenting the balance sheet for the year ending March 31, 2016, the previous year amounts may be appropriately regrouped. It may be noted that the extant instructions on the treatment of such amounts for the purposes of computation of Capital to Risk Weighted Assets Ratio (CRAR), Adjusted Net Bank Credit (ANBC), etc. remain unchanged.

Source: Notification No RBI/2015-16/127 [DBR.BP.BC. No.31/21.04.018/2015-16] dated: July 16, 2015

➲ Export factoring on non-recourse basis

In order to facilitate exports, Authorized Dealer Category – I (AD Category –I) banks have been permitted to provide 'export factoring' services to exporters on 'with recourse' basis by entering into arrangements with overseas institutions for this purpose without prior approval from the Reserve Bank of India subject to compliance with guidelines issued by the Department of Banking Regulation in this regard.

Taking into account the recommendation made by the Technical Committee on Facilities and Services to the Exporters (Chairman: Shri G. Padmanabhan), it has been decided to permit AD banks to factor the export receivables on a non-recourse basis, so as to enable the exporters to improve their cash flow and meet their working capital requirements subject to conditions as under:

a. AD banks may take their own business decision to enter into export factoring arrangement on non-recourse basis. They should ensure that their client is not over financed. Accordingly, they may determine the working capital requirement of their clients taking into account the value of the invoices purchased for factoring. The invoices purchased should represent genuine trade invoices.

b. In case the export financing has not been done by the Export Factor, the Export Factor may pass on the net value to the financing bank/ Institution after realising the export proceeds.

c. AD bank, being the Export Factor, should have an arrangement with the Import Factor for credit evaluation & collection of payment.

d. Notation should be made on the invoice that importer has to make payment to the Import Factor.

e. After factoring, the Export Factor may close the export bills and report the same in the Export Data Processing and Monitoring System (EDPMS) of the Reserve Bank of India.

f. In case of single factor, not involving Import Factor overseas, the Export Factor may obtain credit evaluation details from the correspondent bank abroad.

g. KYC and due diligence on the exporter shall be ensured by the Export Factor.

Source: Notification No RBI/2015-16/129 [A.P. (DIR Series) Circular No.5] dated: July 16, 2015

➲ Foreign Investment in India by Foreign Portfolio Investors

Authorized Dealer Category-I banks are invited to Schedule 5 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA.20/2000- RB dated May 3, 2000 and to A.P. (DIR Series) Circular No. 71 dated February 3, 2015 and A.P. (DIR Series) Circular No. 73 dated February 6, 2015 in terms of which all future investments by an FPI within the limit for investment in corporate bonds shall be required to be made in corporate bonds with a minimum residual maturity of three years.

The Reserve Bank has been receiving enquiries about the applicability of the aforesaid directions on investment by FPIs in security receipts (SRs) issued by the Asset Reconstruction Companies (ARCs). RBI has thus clarified that the restriction on investments with less than three years residual maturity shall not be applicable to investment by FPIs in SRs issued by Asset Reconstruction Companies (ARCs) However, investment in SRs shall be within the overall limit prescribed for corporate debt from time to time.

➲ Priority Sector Lending – Targets and Classification

Master Circular No. FIDD.CO.Plan.BC.04/04.09.01/2015-16 dated July 1, 2015 on the above subject. The target for direct lending by banks to agriculture under Priority Sector Norms has aimed to increase the flow of credit directly to farmers. Direct lending to the most disadvantaged farmers, the small and marginal farmers, has been around 6 percent of Adjusted Net Bank Credit (or Credit Equivalent Amount of Off-Balance Sheet Exposure, whichever is higher). In an effort to increase direct lending to agriculture, the target for direct lending to small and marginal farmers under the recently revised Priority Sector Norms has been increased to 7 percent for 2015-16 and to 8 percent for 2016-17. Furthermore, a variety of corporate loans have been precluded from getting direct lending status. This should ensure that overall direct lending to agriculture, including medium and large farmers, will increase.

Government has nevertheless expressed concerns about the adverse impact of any reduction in direct credit to individual farmers, given the recent weather-related difficulties the agricultural sector is experiencing. Banks are, therefore, directed to ensure that their overall direct lending to non-corporate farmers does not fall below the system-wide average of the last three years achievement (to be notified shortly, and henceforth at the beginning of each year), failing which they will attract the usual penalties for shortfall. They should also continue to maintain all efforts to reach the level of 13.5 percent direct lending to the beneficiaries who earlier constituted the direct agriculture sector.

Source: Notification No RBI/2015-16/132 [FIDD.CO.Plan. BC.08/04.09.01/2015-16] dated: July 16, 2015

INCOME TAX

Circulars/ Notifications

➲ **CBEC unveils procedure for maintenance of electronic records and their authentication by digital signature**

Central Board of Excise and Customs specifies the following conditions, safeguards and procedures for issue of invoices, preserving records in electronic form and authentication of records and invoices by digital signatures, namely:-

1. Every assessee proposing to use digital signature shall use Class 2 or Class 3 Digital Signature Certificate duly issued by the Certifying Authority in India.

2. (i) Every assessee proposing to use digital signatures shall intimate the following details to the jurisdictional Deputy Commissioner or Assistant Commissioner of Central Excise, at least fifteen days in advance:-

a) name, e-mail id, office address and designation of the person authorized to use the digital signature certificate;

b) name of the Certifying Authority;

c) date of issue of digital certificate and validity of the digital signature with a copy of the certificate issued by the Certifying Authority along with the complete address of the said Authority:

Provided that in case of any change in the details submitted to the jurisdictional Deputy Commissioner or Assistant Commissioner, complete details shall be submitted afresh within fifteen days of such change.

(ii) Every assessee already using digital signature shall intimate to the jurisdictional Deputy Commissioner or Assistant Commissioner of Central Excise the above details within fifteen days of issue of this notification.

3. Every assessee who opts to maintain records in electronic form and who has more than one factory or service tax registration shall maintain separate electronic records for each factory or each service tax registration.

4. Every assessee who opts to maintain records in electronic form, shall on request by a Central Excise Officer, produce the specified records in electronic form and invoices through e-mail or on a specified storage device in an electronically readable format for verification of the authenticity of the document and the request for such records and invoices shall be specified in the letter or e-mail by the Central Excise Officer.

5. A Central Excise Officer, during an enquiry, investigation or audit, in accordance with the provisions of section 14 of the Central Excise Act, 1944 and as made applicable to Service Tax as per the provisions contained in section 83 of the Finance Act, 1994, may direct an assessee to furnish printouts of the records in electronic form and invoices and may resume printouts of such records and invoices after verifying the correctness of the same in electronic format; and after the print outs of such records in electronic form have been signed by the assessee or any other person authorized by the assessee in this regard, if so requested by such Central Excise Officer.

6. Every assessee who opts to maintain records in electronic form shall ensure that appropriate backup of records in electronic form is maintained and preserved for a period of 5 years immediately after the financial year to which such records pertain.

Source: Notification No. 18/2015-Central Excise (N.T.) dated: 6th July, 2015

➲ **CBEC releases new system for detailed manual scrutiny of service tax returns**

In the era of self-assessment, the need for a strong compliance verification mechanism cannot be over emphasized. Such a mechanism has three important prongs — audit, anti-evasion and return scrutiny. In order to put in place a strong 'return scrutiny' system, a two-part system of return scrutiny was envisaged— a preliminary scrutiny which would be online covering all the returns; and a detailed manual scrutiny of select returns, identified on the basis of risk parameters, to be done by the Division/ [….]

Read more at: http://www.servicetax.gov.in/circular/st-circular15/st-circ-185-2015.pdf

➲ **Section 10(15), Item (H) of Sub-Clause (Iv) of The Income-Tax Act, 1961 - Exemptions - Interest on Bonds/Debentures - Notified Bonds**

Central Government authorises the entities mentioned in column (2) of the Table given below, to issue, tax-free, secured, redeemable, non-convertible bonds during the financial year 2015-16, aggregating to amounts mentioned in column (3) of the said table, subject to the conditions, namely :—

Conditions:

1. **Eligibility** - The following shall be eligible to subscribe to the bonds:—

(i) Retail Individual Investors (RIIs);

(ii) Qualified Institutional Buyers (QIBs);

(iii) Corporates (including statutory corporations), trusts, partnership firms, Limited Liability Partnerships, co-operative banks, regional rural banks and other legal entities, subject to compliance with their respective Acts; and

(iv) High Networth Individuals (HNIs)

2. **Tenure of bonds** - The tenure of the bonds shall be for ten or fifteen or twenty years.

3. **Permanent Account Number** - It shall be mandatory for the

subscribers to furnish their Permanent Account Number to the issuer of the bonds.

4. **Rate of interest**—
(i) there shall be a ceiling on the coupon rates based on the reference Government security (G-sec) rate;
(ii) the reference G-sec rate shall be the average of the base yield of G-sec for equivalent maturity reported by Fixed Income Money Market and Derivative Association of India (FIMMDA) on a daily basis (working day) prevailing for two weeks ending on the Friday immediately preceding the filing of the final prospectus with the Exchange or Registrar of Companies (ROC) in case of public issue and the Issue opening date in case of private placement;
(iii) the ceiling coupon rate for AAA rated issuers shall be the reference G-sec rate less fifty five basis points in case of RIIs and reference G-sec rate less eighty basis points in case of other investor segments referred to at (ii), (iii) & (iv) of paragraph 1 above;
(iv) in case the rating of the issuer entity is AA+, the ceiling rate shall be ten basis points above the ceiling rate for AAA rated entities [as given in clause(iii)];
(v)in case the rating of the issuer entity is AA or AA-, the ceiling rate shall be twenty basis points above the ceiling rate for AAA rated entities [as given in clause (iii)];
(vi) these ceiling rates shall apply for annual payment of interest and in case the schedule of interest payments is altered to semi-annual, the interest rates shall be reduced by fifteen basis points;
(vii) the higher rate of interest, applicable to RIIs, shall not be available in case the bonds are transferred by RIIs to non retail investors.

5. **Issue expense and brokerage** —
(i) In the case of private placement, the total issue expense shall not exceed 0.25 per cent of the issue size and in case of public issue it shall not exceed 0.65 per cent of the issue size;
(ii) the issue expense would include all expenses relating to the issue like brokerage, advertisement, printing, registration etc.

6. **Public issue** —
(i) At least seventy per cent of the aggregate amount of bonds issued by each entity shall be raised through public issue;
(ii) forty per cent of such public issue shall be earmarked for RIIs.

7. **Private placement** —
(i) While adopting the private placement route to issue the bonds, each entity shall adopt the book building approach as per regulation 11 of the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008, wherein bids shall be sought on the coupon rate subject to a ceiling specified by the entity and the allotment shall be made at the price bid;
(ii)the bonds shall be paid for and issued at a premium with a fixed coupon, to facilitate trading of the instrument under a single International Securities Identification Number (ISIN) and the yield shall be computed based on the price quoted and allotment shall be done for best price (lowest yield) thereof;
(iii) the ceiling rate of the interest shall either be equal to or lower than the rate mentioned in paragraph 4 above;
(iv) while calling for bids, there shall be no limit on the number of arrangers who can bid for the issue.

8. **Repayment of bonds** —
(i) The issuer entity shall submit a financing plan to the Ministry of Finance to demonstrate its ability to repay the borrowed funds on the repayment becoming due;
(ii)the financing plan referred in sub-paragraph (i) shall be submitted to the Infra-Finance Section, Infrastructure Division, Department of Economic Affairs, Ministry of Finance, within three months of closure of the issue, duly supported by a resolution of the respective entity's Board of Directors.

9. **Selection of merchant bankers** —
(i) Merchant bankers shall be selected through competitive bidding process with transparent pre-qualification criteria and the final selection shall be based on financial bids;
(ii) the benefit under section 10 of the Income-tax Act, 1961(43 of 1961) shall be admissible only if the holder of such bonds registers his/ her or its name and the holding with the entity.
(iii) the issue of bonds shall be made in compliance with the public issue requirements specified in the Companies Act, 2013 and Securities and Exchange Board of India (Issue and Listing of Debt Securities), Regulations, 2008, including inter-alia the filing of a prospectus with the Registrar of Companies, as applicable.

Source: Notification No. 59/2015 [F.No.178/27/2015-(Ita-I), dated 6-7-2015

➲ **Section 119 of The Income-Tax Act, 1961 - Income-Tax Authorities - Instructions to Subordinate Authorities - Validation of Tax Returns through Electronic Verification Code**

The Central Board of Direct Taxes ('CBDT') vide Notification No. 41/2015 dated 15-4-2015 in cases of categories of 'persons' specified therein, has introduced Electronic Verification Code ('EVC') as one of the modes for validation of return of income which are filed electronically on or after 1-4-2015.

In case of returns of income pertaining to Assessment Years 2013-2014 and 2014-2015 filed electronically (without digital signature certificate) between 1-4-2014 to 31-3-2015, time-limit for submission of ITR-V to the CPC Bengaluru has already been extended till 31-10-2015 vide Notification No. 1/2015 dated 10-7-2015 issued by the Pr. DGIT(Systems), CBDT. In order to facilitate the process of validation of such returns, CBDT, in exercise of the powers conferred under sub-section (1) of section 119 of the Income-tax Act, 1961, hereby directs that the taxpayer can validate such returns of income within the said extended time through EVC also.

Source: Order F.NO.225/141/2015/ITA.II], dated: 20-7-2015

➲ **India and USA signs Inter Governmental Agreement(IGA) to Implement Foreign Account Tax Compliance Act (FATCA) to promote transparency in tax matters**

Mr. Shaktikanta Das, Revenue Secretary of India and Mr. Richard Verma, U.S. Ambassador to India signed an Inter Governmental Agreement (IGA) to implement the Foreign Account Tax Compliance Act (FATCA) to promote transparency between the two nations on tax matters. The agreement underscores growing international co-operation to end tax evasion everywhere. The text of the signed agreement will be available on the website of the Indian Income Tax Department (www.incometaxindia.gov.in) and the website of U.S. Treasury (www.treasury.gov).
The United States (U.S.) and India have a long standing and close relationship. This friendship extends to mutual assistance in tax matters and includes a desire to improve international tax compliance. The signing of IGA is a re-affirmation of the shared commitment of India and USA towards tax transparency and the fight against offshore tax evasion and avoidance.

Revenue Secretary, Shaktikanta Das stated, "Signing the IGA with U.S. to implement FATCA, is a very important step for the Government of India, to tackle offshore tax evasion. It reaffirms the Government of India's commitment to fight the menace of black money. It is hoped that the exchange of information on automatic basis, regarding offshore accounts under FATCA would deter tax offenders, would enhance tax transparency and eventually bring in higher equity in to the direct tax regime which necessary for a healthy economy."

Ambassador Verma, who signed on behalf of the United States, stated, "The signing of this agreement is an important step forward in the collaboration between the United States and India to combat tax evasion. FATCA is rapidly becoming the global standard in the effort to curtail offshore tax evasion.

The United States enacted FATCA in 2010 to obtain information on accounts held by U.S. taxpayers in other countries. It requires U.S. financial institutions to withhold a portion of payments made to foreign financial institutions (FFIs) who do not agree to identify and report information on U.S. account holders. As per the IGA, FFIs in India will be required to report tax information about U.S. account holders directly to the Indian Government which will, in turn, relay that information to the IRS. The IRS will provide similar information about Indian account holders in the United States. This automatic exchange of information is scheduled to begin on 30th September, 2015.
Both the signing of the IGA with U.S. as well as India's decision to join the Multilateral Competent Authority Agreement (MCAA) on 3rd June, 2015 are two important milestones in India's fight against the menace of black money as it would enable the Indian tax authorities to receive financial account information of Indians from foreign countries on an automatic basis.

Source: Press Release, dated: 9-7-2015

➲ **Section 139D of the Income-Tax Act, 1961 - Return of Income - Ereturns - Electronic Verification Code for electronically filed Income Tax Return**

Explanation to sub-rule (3) of rule 12 of the Income tax Rules, 1962, states that for the purposes of this sub-rule "electronic verification code" means a code generated for the purpose of electronic verification of the person furnishing the return of income as per the data structure and standards specified by Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems). Central Board of Direct Taxes ('Board') under Explanation to sub rule 3 and sub-rule 4 of rule 12 of the Income-tax Rules 1962, the Principal Director General of Income-tax (Systems) lays down the procedures, data structure and standards for Electronic Verification Code as under:
(a) The Electronic Verification Code (EVC) would verify the identity of the person furnishing the return of income (hereinafter called 'Verifier) and would be generated on the E-filing website https://incometaxindiaefiling.gov.in or as otherwise indicated.

(b) The EVC can be used by a verifier being an Individual to verify his Income Tax Return or that of an HUF of which he is the Karta in Income Tax Return Forms 1, 2, 2A, 3, 4 or 4S or the Income Tax Return Form filed in ITR 5 or 7 of any person in accordance with Section 140 of the Income-tax Act.

(c) The EVC generation process may vary based on the risk-category of the Assessee method of accessing the E-filing website or interface with third party authenticating entity.

(d) The EVC would be unique for an Assessee PAN and will not valid for any other PAN at the time of filing of the Income Tax Return.

(e) One EVC can be used to validate one return of the Assessee irrespective of the Assessment Year or return filing type (original or revised). The EVC will be stored against the Assessee PAN along with the other verification details. The EVC will be valid for 72 hours or as otherwise specified. The Verifier can use more than one mode to obtain EVC and can generate the EVC multiple times.

Source: Notification No.2/2015 [F.NO.1/23/CIT (OSD)/-Filing-Electronic Verification/2013-14), dated 13-7-2015

➲ The Electronic filing of Form 6 under The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act 2015 has been enabled under the menu "e-File" after login.

Taxpayers are requested to e-File Form 6 during the compliance window which ends on September 30, 2015.

[Refer Notification No. 58/2015 dated 02/07/2015]

Read more at: https://incometaxindiaefiling.gov.in/eFiling/Portal/StaticPDF/black-money-rules.pdf

➲ The date for filing ITR-V for returns e-Filed for A.Y 2013-14 (filed on or after 1st April 2014 till 31st March 2015) and for A.Y 2014-15 (filed on or after 1st April 2014 till 30th June 2015) extended till 31st October 2015.

Read more at: https://incometaxindiaefiling.gov.in/eFiling/Portal/StaticPDF/itr_v_extension_notification.pdf

Case Laws

➲ **If a receipt/gain is not "income" within the meaning of section 2(24), it cannot be subjected to MAT u/s 115JB .Capital gains from transfer of asset by holding company to its Indian Wholly Owned Subsidiary which is tax exempt u/s 47(iv) is not chargeable to capital gains and consequently is not "income" within meaning of section 2(24)(vi) and hence cannot be included in computation of "book profit" for MAT purposes u/s 115JB**

• The provisions of section 10 lists out various types of income, which do not form part of total income.

• All those items of receipts shall otherwise fall under the definition of the term "income" as defined in section 2(24) of the Act, but they are not included in total income in view of the provisions of section 10 of the Act. Since they are considered as "incomes not included in total income" for some policy reasons, the legislature, in its wisdom, has decided not to subject them to tax u/s 115JB of the Act also, except otherwise specifically provided for.

• Clause (ii) of Explanation 1 to section 115JB specifically provides that the amount of income to which any of the provisions of section 10 applies (other than the provisions contained in clause (38) thereof) than it is to be reduced from the Net profit, if they are credited to the Profit and Loss account.

• The logic of these provisions is that an item of receipt which falls under the definition of "income", are excluded for the purpose of computing "Book Profit", since the said receipts are exempted u/s 10 of the Act while computing total income. Thus, it is seen that the legislature seeks to maintain parity between the computation of "total income" and "book profit", in respect of exempted category of income.
• If the said logic is extended further, an item of receipt which does not fall under the definition of "income" at all and hence falls outside the purview of the computation provisions of Income tax Act, cannot also be included in "book profit" u/s 115JB of the Act.

• The profits and gains arising on transfer of capital asset by holding company to its Wholly Owned Indian Subsidiary is not falling under the definition of "transfer" and consequently, the same does not fall within the purview of the definition of "income" given u/s 2(24) (vi) of the Act.

• Since the said profit does not fall under the definition of "income" at all and since it does not enter into the computation provisions at all, there is no question of including the same in the Book Profit as per the scheme of the provisions of sec. 115JB of the Act.

Source: In the Itat Mumbai Bench 'E', Shivalik Venture (P.) Ltd. v. Deputy Commissioner of Income-tax, 8(3), Mumbai, Joginder Singh, Judicial Member and B.r. Baskaran, Accountant Member [2015] 60 taxmann.com 314 (Mumbai - Trib.)

➲ **Section 92C of the Income-tax Act, 1961 - Transfer pricing - Computation of arm's length price (Comparables and adjustments/Adjustments - In case of startup) - Assessment year 2003-04 - Whether in course of transfer pricing proceedings, while computing operating cost, abnormal costs incurred on account of start up of business like salary, rent and depreciation, etc., have to be excluded - Held, yes [In favour of assessee]**

FACTS

▪ The assessee was engaged in the business of software development and had set up a Business Process Outsourcing (BPO) unit for rendering IT enabled services during the previous year relevant to assessment year 2003-04. The relevant previous year was the first full year of operation of the BPO unit of the assessee.
▪ The assessee's case was that during the previous year 2002-03, the assessee was a start up enterprise and thus, due adjustment ought to be made of the start-up/one-time costs incurred, which inevitably led to losses. It was further submitted that operating profit/loss of the assessee was required to be adjusted to exclude items of abnormal cost/short fall in revenue to determine the normal profit that could have been earned by it for the purpose of benchmarking with other companies which were not in start-up stage.
▪ The TPO having rejected assessee's explanation, made certain adjustment to assessee's ALP on basis of mean margin earned by comparables selected by him.
▪ The DRP confirmed said adjustment.
▪ On appeal:

HELD

▪ There is force in the argument of assessee that while calculating operating cost, the abnormal cost incurred on account of start-up should be excluded. Thus, the TPO/Assessing Officer has to be directed to adjust operating cost by excluding abnormal cost

incurred on account of start-up company like salary, rent and depreciation. This matter is restored to the file of TPO/Assessing Officer to re-determine the operating cost on the above lines to arrive at operating profit.

▪ The appeal is allowed for statistical purposes.

Source: In The Itat Delhi Bench 'I-2', HCL Technologies BPO Services Ltd. v. Assistant Commissioner of Income-tax, CC-2, New Delhi [2015] 60 taxmann.com 186 (Delhi - Trib.)

CUSTOMS

Circulars/ Notifications

➲ Exemption from customs duty on cut and polished diamonds imported by specified agencies in FTP vide Notification No. 40/2015-Cus,dt. 21-07-2015.

Read more at: http://www.cbec.gov.in/htdocs-cbec/customs/cs-act/notifications/notfns-2015/cs-tarr2015/cs40-2015

➲ CBEC to levy definitive anti-dumping duty on imports of Compact Fluorescent Lamps (CFL), originating in or exported from the People's Republic of China for a period of five years vide Notification No. 34/2015-Cus (ADD), dt. 28-07-2015.

➲ CBEC levy definitive anti-dumping duty on imports of Phenol, originating in or exported from South Africa for a period of five years vide Notification No. 32/2015-Cus (ADD), dt. 10-07-2015.

➲ CBEC levy definitive anti-dumping duty on imports of steel and fibre glass measuring tapes and their parts and components, originating in or exported from the People's Republic of China for a period of five years vide Notification No. 31/2015-Cus (ADD), dt. 09-07-2015

➲ Tariff Notification in respect of fixation of T V of Edible oil, Brass, Poppy seed, Areca nut, gold and Sliver vide Notification No. 67/2015-Cus(NT),dt. 15-07-2015.

Read more at: http://www.cbec.gov.in

➲ CBEC seeks to levy definitive anti-dumping duty on imports of Compact Fluorescent Lamps (CFL), originating in or exported from the People's Republic of China for a period of five years vide Notification No. 34/2015-Cus (ADD), dt. 28-07-2015.

Case Laws

➲ **Whether goods were assembled in rural area was a question of fact; not appealable before Apex Court**

Excise & Customs : When it was found by Tribunal, based on relevant certificates, that condition of exemption that 'goods must be assembled in rural area' has been complied with, no question of law arose for consideration by Supreme Court.

Section 5A, read with section 35L of the Central Excise Act, 1944 - Exemptions - Central Excise - General - Assessee was availing exemption available to village industries for goods manufactured in rural areas - Department denied exemption on ground that condition thereof was not complied with viz. individual components of such electronic goods were not assembled in rural area - Assessee submitted a certificate issued by Department of Electronics that 'individual components were assembled in assessee's factory in a rural area' - Adjudicating authority and Tribunal held in favour of assessee - HELD : As a matter of fact, it has been established by assessee that conditions contained in exemption Notification are satisfied - In absence of any question of law, appeal was dismissed [In favour of assessee]
Circulars and Notifications : Notification 88/88-CE., dated 1-3-1988

Source: SUPREME COURT OF INDIA,Commissioner of Central Excise, Hyderabad-III v. Sannihita Elect. W.W. Ind. Cop. Soc. Ltd. [2015] 60 taxmann.com 3 (SC)

CENTRAL EXCISE

Circulars/ Notifications

➲ **Instructions regarding Detailed Scrutiny of Central Excise Returns**

In view of the self-assessment procedure wherein the assessee himself assesses the duty liability, the responsibility of the departmental officers is to scrutinise the assessment made for verification of its correctness.

The highlights of the instructions are as under:

a) The scrutiny of the returns is required to done in two phases Primary Scrutiny and Detailed scrutiny.
b) The detailed scrutiny will be done for the returns which are identified on the basis of risk parameters.
c) The detailed scrutiny should cover min 2% and maximum 5% of the total returns.
d) The assessee which are selected for the audit will not be selected for the detailed scrutiny of the returns
e) During the scrutiny the officers may ask the necessary documents and information. This will lead to one more set of information submission to the department.
f) Most recent return filed by the assessee will be covered under the detailed scrutiny.

g) Once the assessee has been selected for the detailed scrutiny, the same assessee will not be considered for next 12 months.

Source: Circular No. 1004/11/2015-CX dated 21.07.2015

➲ CBEC clarified vide Circular No.1005/12/2015-CX (in pursuance to Notification 34/2015, 35/2015 & 36/2015 CE dated 17th July,2015) that Domestically manufactured goods continue to be exempt from excise duty or subject to concessional rate of excise duty. as the case may be as they were prior to 17th July. 2015.

It may, therefore, be noted that the domestically manufactured goods covered under these notifications / entries continue to he exempt from excise duty or subject to concessional rate of excise duty as the case may be as they were prior to 17th July. 2015. In this context, opinion of the Ministry of Law & Justice was also sought With the concurrence of the Ld. Attorney General notifications No.34/2015-CE. No.35/2015-CE and No.36/2015-CE all dated 17.7.2015 were issued amending the conditions in notifications No.30/2004-CE dated 09.07.2004. No.1/2011-CE dated 01.032011 and No.12/2012-CE dated 17.03.2012, respectively.

In the above context. apprehensions have been raised about the use of the phrase of "appropriate duty" In this regard. Explanations have been inserted in the notifications No.30/2004-CE dated 09.07.2004. No.1/2011-CE dated 01.032011 and No.12/2012-CE dated 17.03.2012 so as to clarify that the appropriate duty or appropriate additional duty or appropriate service tax for the purposes of the said notifications/entries includes nil duty or tax or concessional duty or tax. whether or not read with any relevant exemption notification for the time being in force.

For details read Circular No.1005/12/2015-CX, F.No. 336/4/2015-TRU, dated: 21st July. 2015, Government of India, Ministry of Finance (Department of Revenue), Tax Research Unit

Case Laws

➲ **Assembly of various parts to make water purification system would amount to manufacture**

Central Excise : Assembly of various parts on job-work basis to make Water Purification and Filteration System (WPFS) amounts to 'manufacture', as resultant product was new and different commercial product

Section 2(f) of the Central Excise Act, 1944 - Manufacture - General Meaning - Assessee, a job-worker, received following from PDL : (i) Filter Housing Cartridges, (ii) U.V. Units, (iii) Timer, (iv) Mounting Plate & Screws and (v) Tubings and Fittings - Assessee assembled all said items on a base plate to make Water Purification and Filteration System (WPFS) - Adjudicating authority, Commissioner (Appeals) and Tribunal found that resultant product WPFS was a new product and process amounted to manufacture - Assessee argued that interconnection done by it merely facilitates use of filteration system by customers; otherwise, WPFS retains same characteristics as that of various items and therefore, there was no manufacture - HELD : A finding of fact was arrived at by all three authorities that activity amounted to 'manufacture', as end result of process was new and different commercial product - Since correct legal principle had been applied, assessee's appeal was dismissed with cost [In favour of revenue]

Source: Supreme Court of India, Poonam Spark (P.) Ltd. v. Commissioner of Central Excise

➲ **Valuation of goods - inclusion of additional monetary consideration - transfer of advance import licence in favour of the seller by the buyer enabling the seller of the goods to effect duty free import of the raw materials and bringing down the cost of production/procurement**

Held that:- As per the definition of 'transaction value' contained in this very section, i.e. Section 4(3)(d), certain charges can be added to the price at which the goods are actually sold, under certain circumstances. These include the provision for advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty commission etc.

However, Rule 6 of the Rules specifies that if the goods are sold in the circumstances specified in clause (a) of sub-section (1) of Section 4, then the value of such goods shall be deemed to be the aggregate of such transaction value plus the 'amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee'. The implication of this Rule is that any form of additional consideration which flows from the buyer to the assessee, monitory value thereof is to be included while arriving at the transaction value. It is not necessary that such an additional consideration is to flow directly and even indirect consideration is includible. It is in this context we have to examine as to whether the consideration in the form of drawback, which accrued in favour of the assessee, could be connected with the buyer. It was possible if the transaction between the buyers and the assessee was seen in isolation. However, in the present case, it needs to be emphasized at the cost of repetition that the resultant effect of invalidating the advance licence by the buyer was issuance of licence for intermediate supply in favour of the assessee and the said licence enured certain benefits in favour of the assessee. - Commissioner has rightly come to the conclusion with regard to the fact that additional monetary consideration, in addition to the price being paid for the goods, i.e. transfer of advance import licence in favour of the seller by the buyer enabling the seller of the goods to effect duty free import of the raw materials and bringing down the cost of production/procurement, is a consideration, the monetary value of which has to be considered under the provisions

of the Rules, i.e. Rule 6 thereof.

Case is squarely covered by the judgment of this Court in IFGL's case [2005 (8) TMI 112 - SUPREME COURT] - Decided in favour of Revenue.

Source: Commissioner of Central Excise, Nagpur-I Versus M/s. Indorama Synthetics (I) Ltd.
[2015 (8) TMI 947 - Supreme Court - Central Excise]

➲ **Credit can't be denied on capital goods if depreciation claim on duty element is reversed in revised ITR**

Rule 4, read with rule 3, of the Cenvat Credit Rules, 2004 and rules 57Q, 57R, and 57T of the Central Excise Rules, 1944 - Cenvat Credit - Conditions for allowing of - Capital Goods - Assessee took credit of duty paid on capital goods and also claimed depreciation on duty element - Later, assessee filed revised return deleting depreciation on duty element - Tribunal allowed credit holding that assessee had proved that depreciation was not claimed on duty element - Department argued that rule does not provide for acceptance of revised return and hence, credit could not be allowed and rule 57R(8) must be read down accordingly.

HELD : Considering facts and circumstances and assessment orders passed by Income-tax authorities, Tribunal had found that disallowance of credit was wrong - Hence, revenue's contention to read down rule 57R(8), had to be rejected. [In favour of assessee]

Source: High Court of Bombay, Commissioner of Central Excise & Customs, Aurangabad v. Terna Sethkari Sahakari Sakhar Karkhana Ltd. [2015] 60 taxmann.com 174 (Bombay)

➲ **On conversion of DTA unit into EOU unit, DTA unit can transfer balance of Cenvat to EOU**

Cenvat Credit : In absence of any bar in rule 10, credit available in books of DTA unit may be transferred to 100 per cent EOU on date of conversion of DTA into EOU

Rule 10 of the Cenvat Credit Rules, 2004 - Cenvat Credit - Transfer of - Assessee converted their DTA unit into 100 per cent EOU and transferred Cenvat credit balance lying in DTA unit's account to that of EOU unit - Department denied said transfer - HELD : There is no bar in rule 10 for transfer of credit available in books on date of conversion of a unit in DTA into 100 per cent EOU - In absence of any specific prohibition, assessee is rightly entitled to transfer of same - Hence, demands were set aside. [In favour of assessee]

Source: CESTAT, MUMBAI BENCH, Matrix Laboratories Ltd. v. Commissioner of Central Excise, Nashik
[2015] 60 taxmann.com 6 (Mumbai - CESTAT)

➲ **Benefit of set-off /Input Credit Tax** – Whether input credit of taxes paid on purchase of cotton seed used in manufacture of cotton seed oil can be denied proportionately merely because during process of manufacture by-product (cotton seed cake) is also produced, so when taxable and tax-free goods are simultaneously manufactured, appellant dealer would be entitled to input-tax credit of total tax paid on purchase and same cannot be reduced on pro rata basis

Held that:- it is clear that manufacturer is eligible for benefit of set-off on entire amount of tax paid on purchase of raw material and principle of proportionate liability has been found to be unsustainable –Therefore purchase made by manufacturer with regard to raw material, he is entitled to benefit of set-off on entire amount of tax and principle of apportionment cannot be invoked –Impugned order imposing liability is quashed – Decided in favour of Assesse.

Source: Shreeram Agro Ltd. versus Commissioner of Commercial Tax [2015 (8) TMI 959 - Madhya Pradesh High Court - VAT and Sales Tax]

SERVICE TAX

Circulars/ Notifications

➲ **Digitally signed invoices in Central Excise and Service Tax-Conditions, safeguards and procedures vide Notification No. 18/2015-CENT dt. 06-07-2015**

Central Board of Excise and Customs specifies the following conditions, safeguards and procedures for issue of invoices, preserving records in electronic form and authentication of records and invoices by digital signatures, namely:-

(a) Every assessee proposing to use digital signature shall use Class 2 or Class 3 Digital Signature Certificate duly issued by the Certifying Authority in India.

(i) Every assessee proposing to use digital signatures shall intimate the following details to the jurisdictional Deputy Commissioner or Assistant Commissioner of Central Excise, at least fifteen days in advance:- name, e-mail id, office address and designation of the person authorised to use the digital signature certificate; name of the Certifying Authority, date of issue of digital certificate and validity of the digital signature with a copy of the certificate issued by the Certifying Authority along with the complete address of the said Authority.

(ii) Every assessee already using digital signature shall intimate to the jurisdictional Deputy Commissioner or Assistant Commissioner of Central Excise the above details within fifteen

days of issue of this notification.
(b) Every assessee who opts to maintain records in electronic form and who has more than one factory or service tax registration shall maintain separate electronic records for each factory or each service tax registration.

(c) Every assessee who opts to maintain records in electronic form, shall on request by a Central Excise Officer, produce the specified records in electronic form and invoices through e-mail or on a specified storage device in an electronically readable format for verification of the authenticity of the document and the request for such records and invoices shall be specified in the letter or e-mail by the Central Excise Officer.

(d) A Central Excise Officer, during an enquiry, investigation or audit, in accordance with the provisions of section 14 of the Central Excise Act, 1944 and as made applicable to Service Tax as per the provisions contained in section 83 of the Finance Act, 1994, may direct an assessee to furnish printouts of the records in electronic form and invoices and may resume printouts of such records and invoices after verifying the correctness of the same in electronic format; and after the print outs of such records in electronic form have been signed by the assessee or any other person authorised by the assessee in this regard, if so requested by such Central Excise Officer.

(e) Every assessee who opts to maintain records in electronic form shall ensure that appropriate backup of records in electronic form is maintained and preserved for a period of 5 years immediately after the financial year to which such records pertain.

Source: Notification No. 18/2015-Central Excise (N.T.) dated: 6th July, 2015

Case Laws

➲ **Service Tax could not be levied to indivisible works contract prior to 1-6-2007**

Service Tax: Where Parliament imposed Service Tax on works contract for the first time in 2007, works contract entered into before said date were not liable to Service Tax as there was no charge or machinery to levy Service Tax on indivisible works contract before 2007.

Background of the case:
Finance Act, 2007 came into force on June 1, 2007 which expressly made indivisible works contracts liable to service tax. Issue arose in present case that whether service tax could be levied on indivisible works contracts prior to June 1, 2007.

Supreme Court held as under:
(1) Works contract is a separate species of contract distinct from contracts for services simpliciter recognized by the world of commerce and law as such, and has to be taxed separately as such.
(2) Composite indivisible works contracts can be taxed by Parliament as well as State Legislatures. Parliament can only tax the service element contained in these contracts, and the States can only tax the transfer of property in goods element contained in these contracts. Thus, it becomes very important to segregate the two elements completely because if some element of transfer of property in goods remains when a service tax is levied, the said levy would be found to be constitutionally invalid.

(3) The service tax charging section itself must lay down with specificity that the levy of service tax can be on works contracts, and the measure of tax can only be on that portion of works contracts which contain a service element which is to be derived from the gross amount charged for the works contract less the value of property in goods transferred in the execution of the works contract.

(4) For the first time, Finance Act, 2007 introduced the concept of "works contract" as being a separate subject matter of taxation. Various amendments were made in Finance Act, 1994 by which "works contracts" which were indivisible and composite were split so that only the labour and service element of such contracts would be taxed under the heading "Service Tax".

(5) Before 2007, Finance Act, 1994 didn't lay down any charge or machinery to levy and assess service tax on indivisible composite works contracts. A close look at the Finance Act, 1994 would show that taxable services referred to in the charging Section 65(105) would refer only to service contracts simpliciter and not to composite works contracts. This is clear from the very language of Section 65(105) which defines "taxable service" as "any service provided". All the services referred to in the said sub-clauses are service contracts simpliciter without any other element in them.

(6) Therefore, Service Tax could not be levied to indivisible works contract prior to 1-6-2007.

Source: Supreme Court of India, Commissioner, Central Excise & Customs, Kerala v. Larsen & Toubro Ltd.

➲ **Denial of CENVAT Credit - whether "Training/guesthouse Waiver of pre deposit - Underwriter service**

Assessee contends that the underwriting was rendered by the foreign underwriting firms and the entire service was rendered outside India and no part of the service was performed in India

Held that:- As per RBI Clarification No.13 relating to guidelines for ADR/GDR issues by the Indian Companies the appellants are free to access the ADR/GDR markets through an automatic route without the prior approval of the Ministry of Finance, Department

of Economic Affairs. - Section 66A of the Finance Act, 1994 prescribes levy of service tax on services provided by service provider abroad having fixed establishment thereat to a person in India having fixed establishment in India. It is fundamental principle of that section to treat the recipient of such service as provide thereof and levy tax on such service. This is with a view to obviate the difficulty of bringing a foreign service provider to the Indian law for taxation. Therefore provision of taxable service by a party outside India to the recipient in India is sufficient compliance to taxability.

Prima facie looking into various aspects of the case and without prejudice to the grounds of appeal of appellant as well as contentions of Revenue and also taking into consideration the limitation aspect, it appears that the service provided having "relation to" underwriting of shares of the Indian Company (appellant) provided "in any manner" brings that service to fold of section 65 (105)z of the Finance Act, 1994 and also considering the scheme of Reverse charge mechanism, appellant is directed to deposit ₹ 7,00,00,000 within eight weeks from the date of receipt of the order - stay granted partly.

Source: Sesa Sterlite Ltd. versus Commissioner of Central Excise, Tirunelveli [2015 (8) TMI 958 - CESTAT CHENNAI - Service Tax]

➲ **Denial of CENVAT Credit - Credit on sales commission - Invocation of extended period of limitation**

Held that:- Gujarat High Court in the case of Cadila Healthcare Ltd (2013 (1) TMI 304 - GUJARAT HIGH COURT), after considering the decision of Hon'ble Punjab & Haryana High Court [2011 (7) TMI 980 - PUNJAB & HARYANA HIGH COURT], held that CENVAT Credit on overseas commission would not be admissible and hence, the denial of CENVAT Credit on merit is sustainable. Vide Boards Circular No.943/4/2011-CX, dt.29.04.2011, it was clarified that the definition of input service allows all credit on services used for clearance of final product upto the place of removal. Moreover, the activity of sales promotion is specifically allowed and on many occasions, the remuneration for same is linked to actual sale. Reading the provision harmoniously, it is clarified that the credit is admissible on the services of sale of dutiable goods on commission basis. The Hon'ble Gujarat High Court in the case of Cadila Healthcare Ltd (supra) differed with the view of Hon'ble Punjab & Haryana High Court in the case of Ambika Overseas (supra). It is also noted that the Tribunal in various decisions during the material period held that the CENVAT Credit is available on overseas sales commission. - there is sufficient material to take up the view that the Appellant was holding a bonafide belief of the admissibility of CENVAT credit on overseas sales commission. It has been also noticed that the Appellant has taken the credit and duly recorded in the CENVAT account. Thus, there is no material available to invoke the extended period of limitation.

Accordingly, the demand of CENVAT Credit alongwith interest and penalty for the extended period cannot be sustained.
Denial of CENVAT Credit alongwith interest and penalty is set aside, as barred by limitation - Decided partly in favour of assessee.

Source: M/s CMI FPE Ltd. versus Commissioner, Central Excise & Service Tax, Vapi [2015 (8) TMI 956 - CESTAT AHMEDABAD - Service Tax]

COMPANY LAW

➲ **Relaxation of additional fees and extension of last date of in filing of forms MGT-7 (Annual Return) and AOC-4 (Financial Statement) under the Companies Act, 2013**

Extension in time for filing of Form MGT-7 (Annual Return) and Form AOC-4 in XBRL (Financial Statements) under Companies Act, 2013 without additional fees is allowed up to 31st Oct 2015 . Further a company which is not required to file its financial statement in XBRL format and is required to file its CFS would be able to do so in the separate form for CFS without any additional fees upto 30/11/2015 vide *General Circular 10/2015 dated: 13 July, 2015.*

Read more at: http://www.mca.gov.in/Ministry/pdf/General_Circular_10-2015.pdf

➲ **Clarification with regard to circulation and filling of financial statement under relevant provisions of the Companies Act, 2013**

General Meeting of the company can be called after giving a shorter notice as per provisions of Section 101 of Co.'s Act, 2013 and such companies may also circulate Financial Statements (to be laid / considered in the same General Meeting) at such shorter notice. It is further clarified that in case of a Foreign Subsidiary, which is not required to get its accounts audited as per legal requirements prevalent in the country of its incorporation and which does not get such accounts audited, the Holding / Parent Indian Company may place /file such unaudited accounts to comply with requirements of Section 136 (1) and 137 (1) as applicable. Subject to if such original accounts are not in English then it would be translated in English. Further the format of accounts of foreign subsidiaries should be as far as possible, in accordance with requirements under Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed / filed along with such accounts.

Source: General Circular No. 11/2015 dated 21st July 2015

Read more at: http://www.mca.gov.in/Ministry/pdf/General_Circular_10-2015.pdf

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory body under an Act of Parliament)

HEADQUARTERS
CMA Bhawan
12, Sudder Street, Kolkata 700 016
Tel: +91 33 2252 1031/1034/1035/1492
Fax: +91 33 2252 7993/1026/1723
Email Id: cma.ebulletin@icmai.in

DELHI OFFICE
CMA Bhawan
3, Institutional Area, Lodhi Road,
New Delhi – 110 003
Tel: +91-11-24622156/57/58, 24618645
Fax: +91-11-43583642

OFFICE OF RESEARCH & JOURNAL
CMA Bhawan, 4th Floor
84, Harish Mukherjee Road
Kolkata 700 025, India
Board: +91-33-2454 0086/87/0184
Fax: +91-33-2454 0063